

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICHELLE J. KINNUCAN,

Plaintiff,

v.

NATIONAL SECURITY AGENCY;  
CENTRAL INTELLIGENCE  
AGENCY; DEFENSE  
INTELLIGENCE AGENCY; and  
DEPARTMENT OF DEFENSE,

Defendants.

CASE NO. C20-1309 MJP

ORDER GRANTING MOTION TO  
EXTEND DEADLINE

This matter comes before the Court on Defendants' Motion to Extend Deadline and Notice of Intent to Lodge Classified Declarations for Ex Parte, In Camera Review. (Dkt No. 49.) Having reviewed the Motion, Plaintiff's Opposition (Dkt. No. 51), the Reply (Dkt. No. 54), and all supporting materials, the Court GRANTS the request for an extension.

Rule 16(b)(4) states that "a schedule may be modified only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4). "Rule 16(b)'s 'good cause' standard primarily

1 considers the diligence of the party seeking the amendment.” Johnson v. Mammoth Recreations,  
2 Inc., 975 F.2d 604, 609 (9th Cir. 1992). “[T]he focus of the inquiry is upon the moving party’s  
3 reasons for seeking modification and “if that party was not diligent, the inquiry should end.” Id.  
4 (citation omitted).

5 Defendants have demonstrated good cause to warrant an extension of the Court’s Order  
6 regarding a supplemental Vaughn index and supporting declarations. Defendants claim that the  
7 process required to meet this deadline is time-intensive, and complicated by the CIA’s attorney’s  
8 scheduled leave and coordination that must occur between the agencies involved. While  
9 Defendant’s explanation seems to confirm that they did not provide the most detailed Vaughn  
10 index in the first instance, the list of their current efforts suggests sufficient diligence and need  
11 for additional time to comply with the Court’s Order. And while the Court is not convinced that  
12 this additional delay will prejudice Plaintiff individually, it is aware of the impact that time’s  
13 passage has on the survivors of the U.S.S. Liberty attack. For that reason, there will be no further  
14 extensions of the deadline. Any supplemental Vaughn index and supporting declarations must be  
15 filed by no later than January 6, 2023.

16 As to Defendants’ intent to serve unredacted declarations in support of the Vaughn index  
17 ex parte for in camera review, the Court is skeptical that doing so is proper, particularly since it  
18 will deprive Plaintiff the full opportunity to challenge the assertions presented in the  
19 declarations. See Wiener v. F.B.I., 943 F.2d 972, 979 (9th Cir. 1991) (noting that in camera  
20 review “is appropriate only after the government has submitted as detailed public affidavits and  
21 testimony as possible” given that in camera submission “does not permit effective advocacy”  
22 (citation and quotation omitted)). Defendants have not cited any authority that would permit  
23 them to serve declarations in support of a Vaughn index ex parte and without leave of court or in  
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1 compliance with Ninth Circuit authority and the Local Rules on filing materials under seal. See  
2 Kamakana v. City & Cnty. of Honolulu, 447 F.3d 1172, 1178 (9th Cir. 2006); Local Civil Rule  
3 5(g). To the extent Defendants wish to file or present unredacted copies of any supporting  
4 declarations for ex parte in camera review, they must first seek and obtain leave of Court.  
5 Defendants must also brief the question of whether the Court may properly consider the ex parte  
6 declarations in ruling on the remaining issues in this matter. Defendants may file such a motion  
7 when they file the revised Vaughn index and any public versions of the supporting declarations  
8 whose unredacted counterparts they wish to present in camera. The deadline to do so is January  
9 6, 2023.

10 The clerk is ordered to provide copies of this order to all counsel.

11 Dated December 7, 2022.

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13 Marsha J. Pechman  
14 United States Senior District Judge  
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